



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101**

16 FEB 2007

Reply To
Attn of: OCE-127

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

CT Corporation Systems
Registered Agent for
Nu-West Industries
300 North 6th Street
Boise, Idaho 83701

Re: Clean Air Act Notice of Violation for Nu-West Industries, Inc., Agrium Conda Phosphate Operations

Dear Registered Agent:

Enclosed is a Notice of Violation issued to Nu-West Industries, Inc., (Nu-West) under Section 113 of the Clean Air Act, 42 U.S.C. § 7413. The Notice of Violation notifies Nu-West of violations of the National Emission Standards for Hazardous Air Pollutants under Section 112 of the Clean Air Act and its Tier I/Title V operating permit at its Agrium Conda Phosphate Operations in Soda Springs, Idaho (Agrium Facility).

It is important that Nu-West bring the Agrium Facility into compliance with the requirements of the Clean Air Act as soon as possible. As discussed in the enclosed Notice of Violation, there may be substantial penalties for past and continuing violations of Clean Air Act requirements.

If you have any technical questions concerning this Notice of Violation or would like to request a conference to further discuss it with EPA, please contact Rindy Ramos of my staff at 206-553-6510. For legal matters, please contact Julie Vergeront, U.S. Environmental Protection Agency, Region 10, Office of Regional Counsel, at 206-553-1497.

Sincerely,

**Michael A. Bussell, Director
Office of Compliance and Enforcement**

cc: Charles Ross, General Manager, Nu-West
James A. Cagle, Risk Manager, Nu-West
Tom Edwards, IDEQ's Regional Manager
Michael Simon, Enforcement Manager, IDEQ

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:

Nu-West Industries, Inc.,
Agrium Conda Phosphate Operations,
Soda Springs, Idaho.

NOTICE OF VIOLATION

Pursuant to Section 113 of the Clean Air Act (CAA or Act), 42 U.S.C. § 7413, the United States Environmental Protection Agency (EPA), through the Director of the Office of Compliance and Enforcement, and upon the basis of available information, hereby issues the following Notice of Violation to Nu-West Industries, Inc., doing business as Agrium Conda Phosphate Operations (Agrium), for violations of the CAA at its phosphate fertilizer facility located in Soda Springs, Idaho (Agrium Facility).

APPLICABLE STATUTES AND REGULATIONS

1. Section 112 of the CAA, 42 U.S.C. § 7412, authorizes EPA to promulgate regulations establishing emission standards (or work practice standards if necessary) for categories of new and existing sources that emit listed hazardous air pollutants (HAPs). These standards are known as the National Emissions Standards for Hazardous Air Pollutants (NESHAPs).

2. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated National Emission Standards for Hazardous Air Pollutants from Phosphate Acid Manufacturing Plants, 40 C.F.R. Part 63, Subpart AA (Subpart AA), which apply to the owners and operators of phosphoric acid manufacturing plants that are "major sources," as defined in 40 C.F.R. § 63.2,

and are not "research and development facilities," as defined in 40 C.F.R. § 63.601.

3. Section 63.609(b) of Subpart AA requires each owner or operator of a phosphoric acid manufacturing plant that commences construction or reconstruction of an affected source after December 27, 1996, to achieve compliance with the requirements of Subpart AA upon startup of operations or by June 10, 1999, whichever is later.

4. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants, 40 C.F.R. Part 63, Subpart BB (Subpart BB), which apply to owners and operators of phosphate fertilizers production plants that are "major sources," as defined in 40 C.F.R. § 63.2, and are not "research and development facilities," as defined in 40 C.F.R. § 63.621.

5. Section 63.630(b) of Subpart BB requires each owner or operator of a phosphate fertilizers production plant that commences construction or reconstruction of an affected source after December 27, 1996, to achieve compliance with the requirements of Subpart BB upon startup of operations or by June 10, 1999, whichever is later.

6. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated general provisions for the source-category specific standards promulgated in 40 C.F.R. Part 63 in 40 C.F.R. Part 63, Subpart A (General Provisions). The General Provisions apply to the source-category specific standards of 40 C.F.R. Part 63 as provided in each such source-category specific standard. EPA promulgated revisions to the General Provisions on April 5, 2002, (67 FR 16596), May 30, 2003, (68 FR 32600), April 22, 2004, (69 FR 21752), and April 20, 2006, (71 FR 20446).

7. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that, after the effective date of any permit program approved or promulgated under Title V of the CAA, it shall be unlawful for any person to operate a major source except in compliance with a permit issued by a permitting authority under Title V of the CAA.

8. EPA granted interim approval of the Idaho Department of Environmental Quality's (IDEQ) Title V permit program on January 6, 1997, and the program became effective on that date. 61 FR 64622 (December 5, 1996). EPA promulgated full approval of IDEQ's Title V permit program on November 5, 2001. 66 FR 50574 (October 4, 2001).

GENERAL FINDINGS

9. Agrium is a corporation incorporated in the State of Delaware, and licensed to do business in Idaho.

10. Agrium is the owner and operator of the Agrium Facility.

11. Agrium is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

12. The Agrium Facility directly emits or has the "potential to emit," as defined in 40 C.F.R. § 70.2, 100 tons per year or more of an "air pollutant," as defined in 40 C.F.R. § 70.2.

13. The Agrium Facility is therefore a "major source" as defined in Section 501(2) of the CAA, 42 U.S.C. § 7661(2), and 40 C.F.R. § 70.2.

14. The Agrium Facility emits or has the "potential to emit," as defined in 40 C.F.R. § 63.2, considering controls, in the aggregate, 10 tons per year or more of a "hazardous air pollutant," as defined in 40 C.F.R. § 63.2, or 25 tons per year or more of any combination of hazardous air pollutants.

15. The Agrium Facility is therefore a "major source" as defined in Section 112(a)(2) of the CAA, 42 U.S.C. § 7412(a)(2), and 40 C.F.R. § 63.2.

16. The Agrium Facility is a phosphoric acid manufacturing plant within the meaning of 40 C.F.R. § 63.600 and a phosphate fertilizers production plant within the meaning of 40 C.F.R. § 63.620.

17. The wet-process phosphoric acid plant (WPPA Plant) at the Agrium Facility is a "wet process phosphoric acid process line," within the meaning of 40 C.F.R. § 63.601, and thus an "affected source" under 40 C.F.R. § 63.600.

18. The WPPA Plant was "reconstructed," within the meaning of 40 C.F.R. § 63.2, after December 27, 1996, and was therefore required to achieve compliance with Subpart AA upon startup of operations or by June 10, 1999, whichever is later.

19. The WPPA Plant began startup of operations on August 2, 2001, and thus was required to be in compliance with the requirements of Subpart AA on that date.

20. The granulation plant (Granulation Plant) at the Agrium Facility is a "granular triple superphosphorous process line," within the meaning of 40 C.F.R. § 63.621, and thus an "affected source" under 40 C.F.R. § 63.620.

21. The Granulation Plant was "reconstructed," within the meaning of 40 C.F.R. § 63.2, after December 27, 1996, and was therefore required to achieve compliance with Subpart BB upon startup of operations or by June 10, 1999, whichever is later.

22. The Granulation Plant began startup of operations on November 12, 2001, and thus was required to be in compliance with the requirements of Subpart BB on that date.

23. On October 28, 2002, IDEQ issued a Tier I operating permit to Agrium for the Agrium Facility, operating permit number 029-00003 (Initial Tier I Permit).

24. On September 23, 2003, IDEQ issued an administrative amendment to the Initial Tier I permit. The amended permit was given permit number T1-030319 (Administrative Amendment).

25. On April 8, 2005, IDEQ issued a significant modification to the Administrative Amendment. The modified permit was given permit number T1-040308 (Modified Tier I Permit).

26. The Initial Tier I Permit, Administrative Amendment, and Modified Tier I Permit (hereafter be referred to collectively as the "Agrium Tier I Permit") were issued by IDEQ under its EPA-approved Title V operating permit program.

27. The Agrium Tier I Permit includes as applicable requirements relevant provisions of Subpart AA, Subpart BB, and the General Provisions.

28. Appendix A of the Agrium Tier I Permit states that, in the case of any discrepancy or conflict between the reprint of 40 C.F.R. Part 63, Subpart A, which is included in Appendix A, and the Code of Federal Regulations (C.F.R.), the requirement in the C.F.R. shall control.

29. On October 5 and 6, 2005, an EPA inspector conducted an inspection of the Agrium Facility to determine whether the facility was in compliance with the terms of the Agrium Tier I Permit and other Clean Air Act requirements.

VIOLATIONS

Violation 1

30. Section 6.33 and Appendix A of the Agrium Tier I Permit and 40 C.F.R. § 63.6(e)(1)(I) provide in pertinent part:

Operation and maintenance requirements. (1)(I) At all times, including periods of

startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

31. Pursuant to 40 C.F.R. Part 63, Subpart AA, Appendix A, 40 C.F.R. § 63.6(e)(1)(I) of the General Provisions is applicable to affected sources subject to Subpart AA.

32. During the inspection on October 5, 2005, an EPA inspector observed excessive emissions escaping from the #2 Belt Filter at the Agrium Facility as a result of several gaps in the filter enclosure and inadequate draft in the hooding system.

33. The #2 Belt Filter is a filter within a wet process phosphoric acid process line and, pursuant to 40 C.F.R. § 63.600, is thus an "affected source" under Subpart AA.

34. Agrium failed to operate and maintain the #2 Belt Filter, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

35. Agrium therefore operated the Agrium Facility in violation of Section 112(d) of the CAA, 42 U.S.C. § 7412(d); Section 502(a) of the CAA, 42 U.S.C. § 7661a(a); Section 6.33 and Appendix A of the Agrium Tier 1 Permit; 40 C.F.R. § 63.6(e)(1)(I); and 40 C.F.R. Part 63, Subpart AA, Appendix A, on October 5, 2005, and each day thereafter until corrective actions were taken.

Violation 2

36. During the inspection on October 5, 2005, an EPA inspector observed excessive emissions from several locations around the filter enclosure at the Tilting Pan Filter at the Agrium Facility, including at the inlet area, through various gaps between panels, through missing side panels, and at locations where the side panels were propped open.

37. The Tilting Pan Filter is a filter within a wet process phosphoric acid process line and, pursuant to 40 C.F.R. § 63.600, is thus an "affected source" under Subpart AA.

38. By allowing emissions to escape from Tilting Pan Filter, failing to replace missing side panels on the Tin Pan Filter enclosure, propping open side panels on the Tin Pan Filter enclosure, and otherwise allowing gaps in the Tin Pan Filter enclosure, Agrium failed to operate and maintain the Tilting Pan Filter, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

39. Agrium therefore operated the Agrium Facility in violation of Section 112(d) of the CAA, 42 U.S.C. § 7412(d); Section 502(a) of the CAA, 42 U.S.C. § 7661a(a); Section 6.33 and Appendix A of the Agrium Tier 1 Permit; 40 C.F.R. § 63.6(e)(1)(I); and 40 C.F.R. Part 63, Subpart AA, Appendix A, on October 5, 2005, and each day thereafter until corrective actions were taken.

Violation 3

40. Section 6.33 and Appendix A of the Agrium Tier I Permit and 40 C.F.R. § 63.6(e)(3) provide in pertinent part:

(e)(3) Startup, shutdown, and malfunction plan. (I) The owner or operator of an affected source must develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control monitoring equipment used to comply with the relevant standard. This plan must be developed by the owner or operator by the source's compliance date for that relevant standard.

41. Pursuant to 40 C.F.R. Part 63, Subpart AA, Appendix A, 40 C.F.R. § 63.6(e)(3) of the General Provisions is applicable to affected sources subject to Subpart AA.

42. Pursuant to 40 C.F.R. Part 63, Subpart BB, Appendix A, 40 C.F.R. § 63.6(e)(3) of the General Provisions is applicable to affected sources subject to Subpart BB.

43. During the inspection on October 5 and 6, 2005, an EPA inspector requested Agrium to provide a copy of the Agrium Facility's written startup, shutdown, and malfunction plan required by Section 6.33 and Appendix A of the Agrium Tier 1 Permit; 40 C.F.R. § 63.6(e)(3); 40 C.F.R. Part 63, Subpart AA, Appendix A; and 40 C.F.R. Part 63, Subpart BB, Appendix A (SSM Plan).

44. Agrium provided the EPA inspector with a copy of the facility's Excess Emission Procedures prepared to comply with IDEQ's state rules regarding excess emissions, but did not provide to the EPA inspector a copy of an SSM Plan

45. Agrium had not developed a SSM Plan at the time of the EPA inspection on October 5 and 6, 2005.

46. By failing to develop an SSM Plan for the WPPA Plant by August 2, 2001, and an SSM Plan for the Granulation Plant by November 12, 2001, the dates by which the Agrium Facility was required to be in compliance with Subpart AA and Subpart BB, respectively, Agrium operated in violation of Section 112(d) of the CAA, 42 U.S.C. § 7412(d); Section 502(a) of the CAA, 42 U.S.C. § 7661a(a); Section 6.33 and Appendix A of the Agrium Tier 1 Permit; 40 C.F.R. § 63.6(e)(3); 40 C.F.R. Part 63, Subpart AA, Appendix A; and 40 C.F.R. Part 63, Subpart BB, Appendix A, beginning August 2, 2001 and continuing each day thereafter until Agrium developed an SSM Plan for the Agrium Facility.

Violation 4

47. Sections 2.10, 2.11, 6.17, and 6.18 of the Agrium Tier 1 Permit and 40 C.F.R. §§ 63.606 (a) and 63.626 (a) require each owner or operator of a phosphoric acid

manufacturing plant or phosphate fertilizers production plant to conduct an annual performance test to demonstrate compliance with the applicable emission standard for each identified new or existing affected source according to the procedures in 40 C.F.R. Part 63, Subpart A and 40 C.F.R. §§ 63.606 and 63.626, respectively.

48. Sections 2.12 and 6.19 of the Agrium Tier 1 Permit and 40 C.F.R. §§ 63.606 (b) and 63.626 (b) provide in pertinent part:

(b) In conducting performance tests, each owner or operator of an affected source shall use as reference methods and procedures the test methods in 40 C.F.R. Part 60, Appendix A, or other methods and procedures as specified in this section, except as provided in 40 C.F.R. § 63.7(f).

49. Sections 2.13.1(3)(ii) and 6.20.1(3)(ii) of the Agrium Tier 1 Permit and 40 C.F.R. §§ 63.606 (c)(3)(ii) and 63.626 (c)(3)(ii) provide in pertinent part that, in determining compliance with the applicable total fluoride standards in 40 C.F.R. Part 63, Subparts AA and BB:

The P₂O₅ content (Rp) of the feed shall be determined using as appropriate the following methods (incorporated by reference—see 40 C.F.R. 63.14) specified in the Book of Methods Used and Adopted By The Association Of Florida Phosphate Chemists, Seventh Edition 1991, where applicable.

50. Section 6.33 and Appendix A of the Agrium Tier 1 Permit and 40 C.F.R. § 63.7(f)(1) provide in pertinent part:

Until authorized to use an intermediate or major change or alternative to a test method, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

51. Section 6.33 and Appendix A of the Agrium Tier 1 Permit and 40 C.F.R. § 63.7(f)(2) set forth the procedure for requesting an alternative test method, which includes notifying EPA of the intention to use an alternative test at least 60 days before the performance test is scheduled to begin.

52. During the EPA inspection on October 5 and 6, 2005, Agrium personnel advised the EPA inspector that, for determining the P_2O_5 content of the feed in determining compliance with applicable total fluoride standards in 40 C.F.R. Part 63, Subparts AA and BB, when the P_2O_5 is less than 52%, Agrium was using a method that was not specified in 40 C.F.R. §§ 63.606(c)(3)(ii) or 63.626(c)(3)(ii).

53. As of October 6, 2005, Agrium had not submitted to EPA or to IDEQ a request for the use of an intermediate or major change or alternative to the test method for determining the P_2O_5 content of the feed for purposes of determining compliance with the applicable total fluoride standards in 40 C.F.R. Part 63, Subparts AA and BB, when the P_2O_5 is less than 52%.

54. By determining the P_2O_5 content of the feed for purposes of determining compliance with the applicable total fluoride standards in 40 C.F.R. Part 63, Subparts AA and BB, when the phosphoric acid is less than 52% with a method other than that specified in Sections 2.13.1(3)(ii) and 6.20.1(3)(ii) of the Agrium Tier 1 Permit and 40 C.F.R. §§ 63.606 (c)(3)(ii) and 63.626 (c)(3)(ii), Agrium operated in violation of Section 112(d) of the CAA, 42 U.S.C. § 7412(d); Section 502(a) of the CAA, 42 U.S.C. § 7661a(a); Sections 2.10, 2.11, 2.12, 2.13.1(3)(ii), 6.17, 6.18, 6.19, 6.20.1(3)(ii), 6.33, and Appendix A of the Agrium Tier 1 Permit; 40 C.F.R. §§ 63.7(f), 63.606 (a), 63.606 (b), 63.606(c)(3)(ii), 63.626(a), 63.626(b), and 63.626(c)(3)(ii) beginning from the date of the first required testing and continuing for each day thereafter until Agrium began using the required test method.

Violation 5

55. Section 6.27.2 of the Agrium Tier 1 Permit and 40 C.F.R. § 63.607(2) provide in pertinent part:

As required by [40 C.F.R.] § 63.10, the owner or operator of an affected source shall

submit an excess emissions report for any exceedance of an operating parameter limit. The report shall contain the information specified in [40 C.F.R.] § 63.10. When no exceedances of an operating parameter have occurred, such information shall be included in the report. The report shall be submitted semi-annually and shall be delivered or postmarked by the 30th day after the end of the calendar half. If exceedances are reported, the owner or operator shall report quarterly until a request to reduce the reporting frequency is approved as described in [40 C.F.R.] § 63.10.

56. Agrium was required to submit the first such excess emission report for the WPPA Plant for the period beginning August 2, 2001, within 30 days following the quarter ending September 30, 2001, if there were exceedances during the reporting period, or within 30 days following the six-month period ending December 31, 2001, if there were no exceedances in the reporting period.

57. Agrium did not submit excess emission reports to EPA for the WPPA Plant for the period beginning August 2, 2001, and ending December 31, 2002.

58. By failing to submit excess emission reports for the WPPA Plant for the period beginning August 2, 2001 and ending December 31, 2002, Agrium violated Section 112(d) of the CAA, 42 U.S.C. § 7412(d); Section 502(a) of the CAA, 42 U.S.C. § 7661a(a); Section 6.27.2 of the Agrium Tier 1 Operating Permit; and 40 C.F.R. § 63.607(2), beginning on or about November 1, 2001, until January 31, 2003.

ENFORCEMENT

59. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to take any of the following actions whenever, on the basis of available information, EPA finds that any person has violated, or is in violation of, any requirement or prohibition of the CAA:

- (a) issue an order requiring compliance with such requirements or prohibition;

- (b) issue an administrative penalty order in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), for civil administrative penalties of up to \$25,000 per day of violation;
- (c) bring a civil action in accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation;
- (d) request the Attorney General to commence a criminal action for knowing violations in accordance with Section 113(c) of the CAA, 42 U.S.C. § 7413(c).

60. In addition, under Section 306 of the CAA, the regulations promulgated there under (40 C.F.R. Part 32), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the CAA and all regulations promulgated pursuant to it. Violation of the CAA may result in the subject facility being declared ineligible for participation in any federal contract, grant, or loan.

61. Section 120 of the CAA, 42 U.S.C. § 7420, authorizes EPA to assess penalties for noncompliance, aimed at recovering the economic benefits which the violator has received by operating the facility out of compliance.

62. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2471, as amended by 31 U.S.C. § 3701, and as provided in 40 C.F.R. Part 19, the amounts specified in the forgoing paragraphs increased to \$27,500 per day for each violation occurring on and after January 31, 1997, and further increased to \$32,500 per day for each violation occurring on or after March 15, 2004.

PENALTY ASSESSMENT CRITERIA

63. Section 113(e)(1) of the CAA states that EPA or a court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

64. Section 113(e)(2) of the CAA authorizes EPA or a court to assess a penalty for each day of violation. For the purpose of determining the number of days of violation, where EPA or a state air pollution control agency has notified a source of a violation, and makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

65. Agrium may, upon request, confer with EPA on this matter. The conference will enable Agrium to present evidence bearing on EPA's Notice of Violation, the nature of the violations, and any efforts Agrium may have taken or proposes to take to achieve compliance. Agrium may be represented by counsel. A request for a conference must be made within ten

(10) working days of receipt of this Notice of Violation. The request for a conference or other inquiries concerning the Notice of Violation should be made in writing to:

Rindy Ramos (OCE-127)
Air/RCRA Compliance Unit
Office of Compliance and Enforcement
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101
ramos.rindy@epa.gov
(206) 553-6510
(206) 553-0404 (fax)

66. This Notice of Violation does not waive or limit EPA's right to any remedy available to it under the CAA.

67. This Notice of Violation shall be effective immediately upon issuance.

Issued this 16th day of February, 2007.



Michael A. Bussell, Director
Office of Compliance and Enforcement